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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/458,190	12/09/1999	BRADLEY CAIN	2204/185	8564
34845	7590	03/15/2005	EXAMINER	
STEUBING AND MCGUINNESS & MANARAS LLP 125 NAGOG PARK ACTON, MA 01720			VO, LILIAN	
			ART UNIT	PAPER NUMBER
			2127	

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/458,190

Applicant(s)

CAIN, BRADLEY

Examiner

Lilian Vo

Art Unit

2127

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: NONE
Claim(s) objected to: NONE
Claim(s) rejected: 1 - 6, 8 - 11 and 13 - 15.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: the rejection was deemed proper.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

MENG-AL J. AN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100
Lilian Vo
Examiner
Art Unit: 2127

Continuation of 13. Other: Applicant's arguments have been fully considered but they are not persuasive for the reasons set forth in the final office action and below.

1. Regarding applicant's remark on page 6, 2nd paragraph in which applicant believes the examiner's conclusion is inconsistent with the teaching of Saleh, the examiner disagrees. Application please note "topology distribution ... runs ... at a much lower priority..." (page 4, paragraph 55) does not mean the tasks priorities are fix, thus capable of changing.

On page 7, 3rd paragraph, applicant alleges that the examiner's statement in which task priorities are NOT fixed is simply contradictory to the teaching of Saleh. If applicant believes such statement is a contradictory to Saleh's teaching and that Saleh teaches of tasks with fixed priority or that tasks priority cannot be changed, then applicant needs to provide citation in reference that show such support.

With respect to applicant's remark that "it would appear that the only teaching provided of such a step is the applicant's application" (page 7, 3rd paragraph), the examiner disagrees. Saleh discloses that some tasks are being processed at a lower priority level than the other (paragraph 55). Saleh also discloses that when a node receives LSAs message, it is first analyzed to determine the appropriate actions to be formed (paragraphs 99 - 100, and fig. 6). The LSA is then acknowledged by sending back an appropriate response to the node having transmitted the message.

In response to applicant's arguments (page 7, 3rd paragraph) against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In addition, Welland discloses that when an event is reported for a task, it would raise the current priority of the task to a higher priority level (col. 4, line 63 - col. 4, line 4). It would also obvious for one of an ordinary skill in the art, at the time the invention was made, to combine Welland's teaching with Saleh to boost a current priority of a task to a higher priority level so that necessary operation can be formed in a timely manner to enhance system performance.

2. With respect to applicant's remark regarding Welland's teaching in column 5, this citation was never used in the rejection.

With respect to applicant's assumption that Welland's teaching with tasks has fixed priorities, the examiner disagrees. The examiner refers applicant to col. 4, line 63 - col. 5, line 4, which clearly discloses that when an event is reported for a task, it would raise the current priority of the task to a higher priority level.

In response to applicant's argument that "...the entire reference of Welland should be considered" when determining the motivation (page 9, last paragraph), the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument (page 9, last paragraph) that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation for the rejection is found in the knowledge generally available to one of ordinary skill in the art.

3. With respect to applicant's remark on page 10, last paragraph regarding claims 6 and 11, because the arguments are similar to those in claim 1, applicant is directed to the response as set forth above..